IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5727 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JITENDRABHAI KANAIYALAL ASHAR - Petitioner(s)
Versus
PASCHIM GUJARAT VIJ CO.LTD. THR' DY.ENGINEER - Respondent(s)

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Appearance :

MR DS CHAUHAN for Petitioner(s) : 1,
MR RC JANI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 31/08/2006

ORAL JUDGMENT

1. **RULE.** Mr. R.C. Jani, learned advocate for the respondent, waives service of Rule.

2. The facts of the case which are not in dispute

are that the single phase meter installed at the premises of the petitioner, which was checked on 17.3.2004, was found to be with a manufacturing defect as it was not recording the actual consumption but was recording less consumption. The Electrical Inspector in Case No. A/31/06 on 9.1.2006 decided that as the meter due to defective dial was recording 90% less consumption, from the date of the installation of the meter for every billing period, as per the tariff prevalent at the relevant time, the petitioner be asked to pay the difference giving credit for the amount already paid.

3. Learned advocate Mr. D.S. Chauhan submitted that in this case, no fraud, pilferage or tampering was found and hence the respondent can charge the petitioner only for statutory period, i.e. 'six months'.

4. In this regard, learned advocate Mr. Chauhan relied upon a decision of the Hon'ble the Apex Court in the matter of Belwal Spinning Mills Ltd. Vs. U.P. State Electricity Board and another reported in AIR 1997 Supreme Court 2793. The learned advocate submitted that the Hon'ble the Apex Court has held therein that :

> “By limiting the period for estimation to be made by the Electrical Inspector by the amendment of sub-section (6) and further providing that for the anterior period, in the

absence of fraud, the register of the meter shall be conclusive proof of the supply of the electricity it is quite evident that even if it transpires that the installed meter ceased to be correct, then for the period anterior to the statutory period for which the estimation is not to be made by the Electrical Inspector, the register of the meter about the consumption of the electricity supplied to the consumer shall be binding between the parties by treating such recording as conclusive proof of the consumption in the absence of any fraud practised by the consumer. By the amendment of sub-section (6) the Electrical Inspector has been purposely absolved from the duty to determine as to from which point of time beyond the said statutory period, the meter has ceased to function so that for such entire period, the estimation of the supply of electricity need not be made. Such amendment of sub-section (6), only means that beyond the statutory period, in the event of dispute between the parties as to the proper functioning of the meter and other electrical apparatus, **the consumer has liability to pay the estimated amount indicated by the Electrical Inspector limiting the estimate upto the statutory period and not beyond that**.....".

5. Learned advocate Mr. Jani submitted that it is true that it is not the case of the respondent that fraud, pilferage or tampering was done by the petitioner. However, he submitted that on the

principles of equity, the petitioner having consumed electricity which is not recorded by the meter, due to inherent manufacturing defect, the petitioner should not be allowed to avail the benefit flowing from technicalities. He submitted that he should pay as directed by the impugned order.

Learned advocate Mr. Jani could not give any convincing reason for which the binding decision of the Hon'ble the Apex Court is not required to be followed.

6. It is not in dispute that in the case on hand, the statutory period is 'six months'. In light of the authoritative judgment of the Hon'ble the Apex Court, the petitioner cannot be asked to pay anything more than the period prescribed under the Statute.

7. With the aforesaid observations, the petition is allowed. Rule is made absolute with no order as to costs. The amount which is already deposited in excess should be adjusted in future bills.

Sd/-

(RAVI R. TRIPATHI, J.)

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